

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA
ELKINS

ELLOWOOD EUGENE BENNETT,

Petitioner,

v.

CRIMINAL ACTION NO. 2:90-CR-78
CIVIL ACTION NO. 2:15-CV-45
(BAILEY)

UNITED STATES OF AMERICA,

Respondent.

ORDER ADOPTING REPORT AND RECOMMENDATION

On this day, the above-styled matter came before this Court for consideration of the Report and Recommendation of United States Magistrate Judge James E. Seibert [Crim. Doc. 360; Civ. Doc. 7]. Pursuant to this Court's Local Rules, this action was referred to Magistrate Judge Seibert for submission of a proposed report and a recommendation ("R & R"). Magistrate Judge Seibert filed his R&R on August 1, 2016, wherein he recommends this Court deny and dismiss the petitioner's petition for writ of habeas corpus without prejudice.

Pursuant to 28 U.S.C. § 636(b)(1)(c), this Court is required to make a *de novo* review of those portions of the magistrate judge's findings to which objection is made. However, the Court is not required to review, under a *de novo* or any other standard, the factual or legal conclusions of the magistrate judge as to those portions of the findings or recommendation to which no objections are addressed. *Thomas v. Arn*, 474 U.S. 140, 150 (1985). In addition, failure to file timely objections constitutes a waiver of *de novo* review and the right to appeal this Court's Order. 28 U.S.C. § 636(b)(1); *Snyder v.*

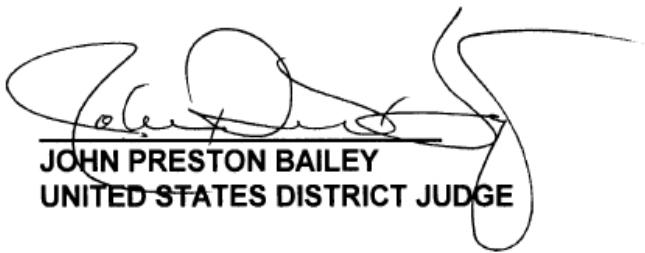
Ridenour, 889 F.2d 1363, 1366 (4th Cir. 1989); *United States v. Schronce*, 727 F.2d 91, 94 (4th Cir. 1984). Here, objections to Magistrate Judge Seibert's R&R were due within fourteen (14) days of receipt, pursuant to 28 U.S.C. § 636(b)(1) and Fed.R.Civ.P. 72(b). The docket reflects that service was accepted on August 9, 2016 [Crim. Doc. 361; Civ. Doc. 7]. No objections have been filed to date.¹ Accordingly, this Court will review the R&R for clear error.

Upon careful review of the above, it is the opinion of this Court that the **Report and Recommendation** [Crim. Doc. 360; Civ. Doc. 7] should be, and is, hereby **ORDERED ADOPTED** for the reasons more fully stated in the magistrate judge's report. Accordingly, this Court **ORDERS** that the petitioner's **Motion to Vacate, Set Aside, or Correct Sentence** [Crim. Doc. 349; Civ. Doc. 1] be **DENIED** and **DISMISSED WITHOUT PREJUDICE**, and petitioner's **Motion for Summary Judgment** [Crim. Doc. 359] be **DENIED AS MOOT**. This Court further **DIRECTS** the Clerk to enter judgment in favor of the respondent and to **STRIKE** this case from the active docket of this Court.

It is so **ORDERED**.

The Clerk is directed to transmit copies of this Order to any counsel of record and to mail a copy to the *pro se* petitioner.

DATED: August 29, 2016.



JOHN PRESTON BAILEY
UNITED STATES DISTRICT JUDGE

¹ This Court notes that petitioner did file a Motion/ Application for Leave to File Second or Successive Motion to Vacate [Crim. Doc. 362] on August 26, 2016. However, upon careful review of the same, this Court cannot possibly construe that filing as objections to Magistrate Judge Seibert's R&R.